

## SAMPLE DOCUMENT: Solar Land Lease Agreement

### **Disclaimer:**

***This sample solar land lease agreement is designed to educate non-profit organizations that might pursue investors for solar array installations. Neither Southface nor Agnes Scott College prepared this sample lease agreement and neither organization assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of this sample agreement by other parties. A non-profit organization interested in pursuing a solar lease should consult with legal counsel that is well versed in this matter.***

***NOTE: This sample lease document is for a ground mounted system in the state of Georgia. Consult with your legal counsel regarding modifications for use in another state and whether the word "roof" can be substituted for the word "ground" to make the lease work for a roof lease agreement.***

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### **LAND LEASE AGREEMENT**

**THIS LEASE AGREEMENT ("Lease")** is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, (the "Effective Date"), by and between ("Landlord") and ("Tenant").

#### **WITNESSETH:**

WHEREAS, Landlord is the owner of that certain parcel of land known as ----- having an address of ----- and more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the "Land") together with all other structures and improvements situate on the Land (the "Improvements", and together with the Ground (hereinafter defined), the "Property");

WHEREAS, Tenant desires to lease from Landlord a portion of the Land constituting approximately --- square feet of space (the "Ground"), the same being more specifically described and/or depicted on **Exhibit A** attached hereto and incorporated herein by reference, along with other portions of the Land and equipment found on the Land (the "Premises, as hereinafter defined) for the purpose of installing and operating a solar photovoltaic electricity generating system on the Ground and in and around the Land (inclusive of the Equipment (hereinafter defined), the "System"), for the production of electricity and connection to the electricity transmission grid system (the "Grid");

WHEREAS, Landlord has agreed to lease the Premises to Tenant for said purpose, all subject to and in accordance with the terms hereinafter set forth.

**NOW, THEREFORE**, in consideration of \$----- and for the mutual covenants and conditions contained herein, and for other good and valuable consideration, Landlord and Tenant hereby agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

In addition to the terms defined elsewhere in this Lease, the following terms shall have the meanings set forth below:

**1.01 "Base Commencement Date"** means the earlier of (A) twelve (12) months following the Commencement Date; or (B) the date upon which (i) the System is mechanically complete and operating, (ii) Electrical Output is delivered through the System to the Grid under local and state regulations, and (iii) the System is "placed in service" in accordance with the Code.

**1.02 "Code"** means the Internal Revenue Code of 1986, as amended, and any successor statute, and all regulations promulgated thereunder.

**1.03 "Commission"** means the Utilities Commission of the State or a comparable commission or agency of the State.

**1.04 "Commencement Date"** means the day that is 10 days following the Effective Date of this Lease.

**1.05 "Electrical Output"** means the total quantity of all actual net electricity generated by the System (measured in kilowatt-hours (kWh)) and delivered to the Grid, in any given period of time. Electrical Output does not include Environmental Incentives or Environmental Attributes.

**1.06 "Expiration Date"** means the last day of the calendar month within which occurs (i) the twenty (20) year anniversary of the Base Commencement Date, or (ii) if applicable, the last day of the last extension in effect as described in **Section 2.01(c)**.

**1.07 "Environmental Attributes"** means the characteristics of electricity generation from the System that have intrinsic value, separate and apart from the Electrical Output, arising from the perceived environmental benefits of the System, including all environmental and other attributes that differentiate the System or the Electrical Output from energy generated by fossil-fuel based generation units, fuels or resources, characteristics of the System that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the System or the compliance of the System or the Electrical Output with the laws, rules and standards of the United Nations Framework Convention on Climate Change or the Kyoto Protocol thereto or crediting "early action" with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the United States Environmental Protection Agency or any state or federal entity given

jurisdiction over a program involving transferability of rights arising from Environmental Attributes.

**1.08 "Environmental Incentives"** means all financial rights, credits (including tax credits such as the Federal Investment Tax Credit), rebates, benefits, reductions, offsets, allowances, grants and entitlements of any kind, arising from the Electrical Output or otherwise from the development or installation of the System or the production, sale, purchase, consumption or use of the Electrical Output.

**1.09 "Person"** means the United States of America, any state government or political subdivision thereof, any governmental agency or authority, an individual, partnership, joint venture, limited liability company, corporation, trust or other business or non-business entity, and the heirs, executors, administrators, legal representatives, successors and assigns thereof.

**1.10 "REC"** means the set of non-energy attributes directly attributable to the Electrical Output, specifically including "renewable energy certificates." A "REC" is an Environmental Attribute and includes capacity credits, tradable generation rights, benefits, emissions reductions, pollution/emission credits, offsets and allowances, including any and all air quality credits, benefits, emissions reductions or avoidances, off-sets or other benefits, howsoever entitled, as may be created or which may exist under any existing or future statutory or regulatory scheme (federal, state or local), for such purposes by virtue of or due to the System's actual electricity production or the System's electricity production capability because of the System's environmental or renewable characteristics or attributes. "REC" does not include (i) all investment tax credits, any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to Tenant or any other Person based on ownership, tenancy or a security interest in the System, or Electrical Output from any portion of the System, including any investment tax credit expected to be available to Tenant or such other Person with respect to the System, including any tax credit available under the Code, and (ii) depreciation deductions and benefits and other tax benefits arising from ownership or operation of the System unrelated to its status as a generator of renewable or environmentally clean electricity.

**1.11 "State"** means Georgia.

**1.12 "Utility"** means Georgia Power Company, its successors and/or assigns, and/or any other Person which is the direct purchaser of the Electrical Output.

## **ARTICLE 2**

### **TERM; CONDITIONS PRECEDENT**

**2.01 Term.** The term of the Lease shall be as follows (collectively the "Term");

(a) **Initial Term.** Commencing on the Commencement Date and continuing until the Base Commencement Date (the "Initial Term").

(b) **Base Term.** Commencing on the Base Commencement Date and continuing until the Expiration Date (the "Base Term").

(c) **Extensions.** The initial twenty (20) year Base Term of this Agreement shall automatically extend for two (2) additional five (5) year periods on the same terms and conditions in effect upon the commencement of the Lease, unless either Landlord or Tenant provides the other with written notice of its intent not to extend this Lease at least ninety (90) days before the end of the applicable or extended period of the Base Term.

(d) **Termination by Tenant.** Tenant shall have the right at any time to terminate the Lease on ten (10) days' written notice with no further liability to either party if Tenant determines in its reasonable discretion that performance of the Lease is commercially inadvisable or technologically impractical for any reason whatsoever.

**2.02 Conditions Precedent.** The parties acknowledge and agree that the following are conditions precedent to the effectiveness of the Lease of the Premises:

(a) **Due Diligence/Engineering Studies.** Tenant's receipt of satisfactory due diligence inspections, reports and studies relative to the Premises, the Land and the System, including (i) a report from a licensed engineer that the Ground will support the aggregate weight of the Ground Equipment, and (ii) certifications on title to, and the zoning of, the Property. All costs and expenses whatsoever of due diligence activities shall be Tenant's responsibility.

(b) **Financing.** Obtaining (i) suitable and acceptable financing for the purchase and installation of the System, and (ii) a commitment from an equity investor(s), in each such case in such amounts as Tenant deems sufficient in its sole discretion.

(c) **Power Purchase and Related Agreements.** Obtaining contracts for (i) the sale of Electrical Output and all available Environmental Attributes and Environmental Incentives related to the System, in such amounts as Tenant deems sufficient in its sole discretion, and (ii) connection to the Grid (collectively the "Material Contracts"). Landlord shall provide reasonable cooperation to Tenant in this regard, to the extent required as the owner of the Leased Premises, including executing any documents, instruments and agreements which are in form and content reasonably acceptable to Landlord, to further the development, installation and operation of the System.

(d) **Permits.** Obtaining all permits, contracts and agreements required for ownership, installation, operation and maintenance of the System (collectively the "Permits").

(e) **Regulatory Approval.** Obtaining all necessary authorizations, certifications and licenses from the Commission and all other Persons for the operation of the System and the sale and delivery of Electrical Output therefrom (collectively the "Licenses").

(f) **SNDA.** The delivery to Tenant of an acceptable subordination, non-disturbance and attornment agreement from all mortgagees with respect to the Property.

**2.03 Satisfaction of Conditions; Waiver.** Tenant shall use commercially reasonable efforts to attempt to satisfy the foregoing conditions as promptly as possible following the Effective Date. If the foregoing conditions are not satisfied or waived by Tenant prior to the date that is thirty (30) days prior to the occurrence of the Base Commencement Date (the "Termination Deadline"), either party may terminate this Lease by delivery of written notice to the other prior to the commencement of the Base Term, and neither party shall have any liability to the other except for those terms hereof which by their express terms or by practical implication survive the expiration or termination of this Lease. A failure to so terminate this Lease prior to the Termination Deadline shall constitute a waiver of the foregoing conditions precedent.

**2.04 Landlord Cooperation.** Landlord agrees, at no cost or expense to it, to reasonably cooperate to assist Tenant in its efforts to obtain the Material Contracts, Permits and Licenses to install and operate the System, as well as to obtain any certifications, approvals and/or inspections by any necessary Person, including the Commission and Utility; provided however, except as expressly agreed herein, Landlord shall not be required to execute any document that would impose any financial liabilities or obligations on it not indemnified by Tenant or take or approve any action which would adversely affect it or existing tenants of the Land. Landlord further agrees, at no cost or expense to it, to reasonably cooperate, including executing a connection or similar agreement, which is reasonably satisfactory to Landlord, with the Utility or any other person or entity intending to purchase the Electrical Output.

### **ARTICLE 3**

#### **GRANT AND TERM**

**3.01 Lease of Premises.** All subject to and in accordance with the terms and conditions of this Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord the following (collectively the "Premises"):

(a) **Ground.** The Ground for Tenant to install, operate, inspect, maintain, improve, repair, replace and remove (i) solar power generating panels and any additional equipment necessary to generate, monitor and transmit solar electrical power (the "Ground Equipment") and (ii) one or more inverters and any additional equipment necessary to generate and transmit solar power (the "Inverters", and collectively with the Ground Equipment, Connecting Equipment, and any other equipment, conduit or personal property installed on or placed upon the Premises and used in connection with the System, the "Equipment"); and

(b) **Transformer(s).** To the extent of Landlord's rights therein, any electric transformer in or on the Land, on the Property, or used by or connected to the Land (collectively the "Transformer") for Tenant to connect thereto to transmit electricity generated by the System to the Grid.

(The Equipment and Transformer are more particularly described on **Exhibit B** attached hereto and incorporated herein by reference.)

**3.02 Easements.** Landlord hereby grants to Tenant, for the Term, a non-exclusive easement for ingress, egress and regress over and across and in and on the Property using existing or future constructed roadways and passageways as reasonably necessary, or otherwise without interference to Landlord or its agents, employees, invitees with respect to use and enjoyment of the Land and the Property, to enable Tenant to have vehicular and pedestrian access to the System for the purpose of installation, operating, inspection, maintenance, improvement, repair, replacement and removal thereof (the "Easements"). The use and enjoyment of the Easements shall be subject to the terms and conditions of this Lease, including without limitation, the provisions of **Article 10** hereof.

**3.03 Solar Access.**

At Tenant's request, Tenant may prepare and Landlord shall execute for recordation by Tenant in the real property records of DeKalb County where the Premises are located a solar easement instrument ("Solar Easement") in substantially the form attached as **Exhibit C**. The form of Solar Easement recorded must contain, at a minimum the following information:

(a) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed by Landlord, or a combination of these descriptions.

(b) The restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the passage of sunlight through the easement.

(c) The terms or conditions, if any, under which the easement may be revised or terminated.

Landlord shall not take actions, or allow others to conduct activities either materially inconsistent with the Solar Easement or otherwise, that cause shading of the System to an extent that materially impairs or reduces the Electrical Output of the System.

**3.04 Landlord Laydown Area.**

Landlord will use commercially reasonable efforts to provide sufficient space in close proximity to the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during any installation, operation, inspection, maintenance, improvement, repair, replacement or removal of the System. Landlord will also provide Tenant a reasonable area for construction type laydown and staging. Landlord and Tenant will coordinate and cooperate in determining the amount of space required for such purposes.

**3.05 Environmental Attributes and RECs.**

Tenant acknowledges that any Environmental Attributes and RECs belong to Landlord. Tenant shall cooperate with Landlord in any applications for Environmental Attributes or RECs; provided, however, that Tenant is not required to disclose proprietary information in connection with completing such applications.

### **3.06 Environmental Incentives.**

Landlord acknowledges that any Environmental Incentives belong to Tenant. Landlord shall cooperate with tenant in any application for Environmental Incentives.

### **3.07 Publicity Rights.**

Landlord shall retain publicity rights with respect to the System. Without the express written consent of Tenant, which shall not be unreasonably withheld or delayed, Landlord shall not make or publish any public statement or notice regarding any Environmental Incentive relating to the System or the Electrical Output of the System. Subject to Tenant's consent (not to be unreasonably withheld), Landlord shall have the right to publicize that it is serving as a "site host" for the System and to display photographs of the System in its advertising and promotional materials, provided any such materials shall not identify Tenant as the owner and developer of the System without the express written consent of the Tenant. Without the express written consent of Landlord, which Landlord shall not unreasonably withhold or delay, Tenant shall not make or publish and public statement or notice, or publish any advertising/promotional material, that (i) mentions Landlord, (ii) uses any marks or intellectual property of Landlord, or (iii) uses any photographs or visual depictions of Landlord or the Property.

## **ARTICLE 4**

### **DELIVERY OF PREMISES; INSTALLATION OF SYSTEM**

**4.01 Delivery of Premises.** Landlord and Tenant agree that the Premises will be delivered to Tenant on the Commencement Date in an "AS IS, WHERE IS, WITH ALL FAULTS" condition, and Landlord makes no representation or warranty, express or implied, as to the condition of the Premises or the Property. Tenant agrees that it will accept delivery of the Premises in said condition, and that its use or occupancy shall be deemed a representation to Landlord that it has inspected the Premises and the Property and constitutes and finds the same satisfactory for its intended use.

### **4.02 Placement of System Components.**

(a) **Initial Placement.** The System and Equipment shall be installed and/or placed on those portions of the Premises as depicted (or to be depicted) on the attached **Exhibit B**. Notwithstanding anything contained herein to the contrary, the System and Equipment shall be installed only in the locations and by methods that have been approved in advance by Landlord, and all costs and expenses associated with the same shall be borne by Tenant. Except as otherwise set forth in this Lease, Tenant shall have no right to access or utilize any other parts of the Land or the Property.

(b) **Tenant Alterations; Relocations.** Following the initial placement/installation of the System and Equipment, Tenant shall not make or permit to be made any changes, alterations, additions or improvements to the Premises or the



System, or any relocation of the System or any singular or plural Equipment (including following any casualty) (each a "Tenant Alteration") without first obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed.

(c) **Builder's Risk or Equivalent.** Prior to making any initial installation or subsequent Tenant Alteration, Tenant shall, prior to the commencement thereof, furnish Landlord with certificate of Builder's Risk insurance (or equivalence thereof insuring Tenant's installation activities) in a form and an amount of coverage reasonably acceptable to Landlord. The Builder's Risk policy of insurance may be purchased by Tenant or by Tenant's Contractor. The initial installation and any subsequent Tenant Alteration shall be performed in accordance with all legal requirements applicable thereto and in a good and workmanlike manner.

(d) **Protection Against Liens.** Tenant agrees to keep the Property free and clear of all mechanic liens arising by, through or under Tenant. In the event that a lien is filed against the Property or the Landlord's property as a result of labor or material supplied to the Property by or through Tenant or its contractors, the Tenant agrees to within thirty (30) days either obtain the release and discharge of such mechanic lien or to bond off such mechanic lien. In the event that the Tenant shall fail to discharge such lien within such period of time, Landlord shall have the right to either discharge or bond such lien and Tenant shall immediately reimburse Landlord for all costs and expenses relating thereto. In all events, Tenant shall be responsible for all expenses incurred by the Landlord as a result of the filing of such a mechanic's lien against the Property, including reasonable attorney fees and expenses.

## **ARTICLE 5**

**(Intentionally Omitted)**

## **ARTICLE 6**

### **TAXES/ASSESSMENTS**

**6.01 Payment of Taxes and Assessments.** Landlord is a 501(c)(3) non-profit entity. Tenant agrees that Landlord shall have no responsibility for paying ad valorem or other property taxes or assessments levied upon the Property, as a result of this Agreement, regardless of the governmental jurisdiction, authority or authorities levying the same (the "Taxing Authority") during the Term of this Lease, or any extensions hereof. Tenant shall be responsible for payment of any taxes that result from this Agreement.

**6.02 Personal Property Taxes.** Tenant shall pay any taxes, assessments or fees of any nature imposed or assessed upon Tenant's occupancy of the Premises, upon the System or Equipment, or upon any other furnishings, trade fixtures, equipment, machinery, solar panels, conduit, inventory, merchandise or other personal property of Tenant located on the Premises and owned by or in the custody of Tenant promptly as all such taxes or assessments may

become due and payable without any delinquency. Such payment shall be made by Tenant directly to such governmental body if billed to Tenant. However, in the event such taxes are billed to Landlord by the governmental body, such taxes are to be paid by Tenant hereunder upon demand being so made by Landlord.

**6.03 Landlord's Right to Perform Tenant's Tax Obligations.** Without limiting any other right or remedy of Landlord set forth herein, in the event Tenant fails to pay any tax, assessments or fee required hereunder or by law prior to delinquency, Landlord shall have the right (but not the obligation) to pay such taxes, assessments or fees on Tenant's behalf, in which event said amounts so paid, together with interest at the rate per annum equal to the "prime rate" as published from time to time in The Wall Street Journal (the "Prime Rate"), shall be due and payable by Tenant to Landlord immediately upon demand

## **ARTICLE 7**

### **INSURANCE**

**7.01 Tenant's Required Insurance.** Tenant covenants and agrees that from and after the Commencement Date and continuing throughout the Term, Tenant will carry and maintain, at its sole cost and expense, the insurance required below:

(a) **Liability.** Liability insurance in the Commercial General Liability form (or reasonable equivalent thereto) covering the Premises and Tenant's use thereof against claims for personal injury or death, property damage and product liability occurring upon, in or about the Premises), to be in combined single limits amounts not less than \$1,000,000.00 and to have general aggregate limits of not less than \$2,000,000.00 for each policy year.

**7.02 Tenant's Certificates of Insurance.** Tenant shall furnish to Landlord a certificate of such insurance with endorsements affording Landlord additional insured status, and such other evidence satisfactory to Landlord of the maintenance of all insurance coverage required hereunder prior to delivery of possession of the Property and ten (10) days prior to each renewal date. Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord at least ten (10) days before cancellation or a material reduction in the coverage required of any such insurance policies. All such insurance policies shall be in form, and issued by companies licensed to do business in the state in which the Property is located with a minimum Best's Rating of "A- XII" or better, unless otherwise approved and reasonably satisfactory to Landlord. In the event that Tenant fails to provide evidence of required insurance within ten (10) days following Landlord's request thereof, Landlord shall be authorized (but not required) to procure such coverage in the amount stated with all costs thereto to be chargeable to Tenant and payable upon written invoice thereof. The limits of insurance required by this Lease, or as carried by Tenant, shall not limit the liability of Tenant or relieve Tenant of any obligation hereunder.

**7.03 Landlord's Required Insurance.** Throughout the Term (including any extensions thereof), Landlord shall, at its own cost and expense, obtain and maintain in effect the following insurance coverage:

(a) **Liability.** Commercial General Liability insurance written on an occurrence basis with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. This insurance shall cover claims for bodily injury, property damage (including property damage to the System and Equipment), and contractual liability applicable to Landlord's obligations under this Lease.

(b) **Property.** Property insurance coverage on the System and Equipment in an amount not less than the replacement cost of same naming Tenant as loss payee. Property insurance covering the System and Equipment shall be written on a replacement cost basis and on a form which protects against perils on an "all-risk" basis. If property damage to System and Equipment does not exceed Landlord's Property insurance deductible, Landlord agrees to indemnify Tenant directly for such property damage as calculated by an appraiser selected by Tenant.

**7.04 Landlord's Certificates of Insurance.** Landlord shall furnish to Tenant certificates of such insurance with endorsements affording Tenant additional insured and loss payee status, and such other evidence satisfactory to Tenant of the maintenance of all insurance coverage required hereunder prior to delivery of possession of the Property and ten (10) days prior to each renewal date. The additional insured endorsement shall be primary and noncontributory with any other insurance in force. Landlord shall obtain a written obligation on the part of each insurance company to notify Tenant at least ten (10) days before cancellation or a material reduction in the coverage required of any such insurance policies. All such insurance policies shall be in form, and issued by companies licensed to do business in the state in which the Property is located with a minimum Best's Rating of "A- XII" or better, unless otherwise approved and reasonably satisfactory to Tenant. In the event that Landlord fails to provide evidence of required insurance within ten (10) days following Landlord's request thereof, Tenant shall be authorized (but not required) to procure such coverage in the amount stated with all costs thereto to be chargeable to Landlord and payable upon written invoice thereof. The limits of insurance required by this Lease, or as carried by Landlord, shall not limit the liability of Landlord or relieve Landlord of any obligation hereunder.

**7.05. Indemnification.** To the maximum extent permitted by law, Landlord shall defend, with counsel reasonably satisfactory to Tenant, and indemnify and hold Tenant harmless from and against all liabilities, fines, suits, claims, demands, actions, causes of action, losses, costs (including reasonable attorneys' fees), damages, judgments, expenses of any kind or character whatsoever, asserted against Tenant, System or Equipment, by third Persons or suffered or incurred by Tenant which arise in connection with the System and Equipment and are not the result of Tenant's gross negligence or willful misconduct.

To the maximum extent permitted by law, Tenant shall defend, with counsel reasonably satisfactory to Landlord, and indemnify and hold Landlord harmless from and against all

liabilities, fines, suits, claims, demands, actions, causes of action, losses, costs (including reasonable attorneys' fees), damages, judgments, expenses of any kind or character whatsoever, asserted against Landlord or Property by third Persons or suffered or incurred by Landlord which arise in connection with the System and Equipment and are the result of Tenant's gross negligence or willful misconduct.

The indemnifying party shall have the right to defend the indemnitee by counsel (including insurance counsel) with respect to any claims within the indemnification obligations hereof. The indemnifying party shall give the indemnitee prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate in the defense of any such claims or actions. The indemnitee shall not take any action relating to such claims or actions within the indemnification obligations hereof without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld, and the indemnifying party shall not settle any such claims without the indemnitee's prior written consent, unless the settlement includes a full and unconditional release of claims against the indemnitee.

**7.06 Waiver of Subrogation.** Landlord hereby releases Tenant and Tenant hereby releases Landlord to the extent of their respective casualty insurance coverage, from any liability for loss or damage to the Premises caused by fire or any of the extended coverage casualties included in their respective insurance policies, even if such fire or other casualty should be brought about by the fault or negligence of the other party, or such party's agents or employees.

**7.07 LIMITATION OF LIABILITY.** TENANT SHALL NOT BE LIABLE TO LANDLORD OR ANY PERSON CLAIMING BY, THROUGH OR UNDER LANDLORD FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THE LEASE OR TENANT'S ACTS OR OMISSIONS, WHETHER BY WAY OF INDEMNIFICATION OR OTHERWISE.

LANDLORD SHALL NOT BE LIABLE TO TENANT OR ANY PERSON CLAIMING BY, THROUGH OR UNDER TENANT FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THE LEASE OR LANDLORD'S ACTS OR OMISSIONS, WHETHER BY WAY OF INDEMNIFICATION OR OTHERWISE.

## **ARTICLE 8**

### **MAINTENANCE AND REPAIRS**

**8.01 Maintenance of the System.** Tenant shall operate and maintain the System and Equipment in good working order, in a safe and clean manner, and in accordance with all applicable laws, rules and regulations. In the event the System or Equipment become damaged or destroyed at any time during the Term, Tenant shall have the right to repair, replace or reinstall the Equipment or any portion thereof at times approved by Landlord, which approval

shall not be unreasonably withheld or delayed, and in a manner which complies with the terms of this Lease. If the Equipment is damaged or destroyed as a direct result of the breach, act or omission, negligence or willful misconduct of Landlord, its agents, employees, contractors, authorized representatives or invitees, Landlord shall be liable for the full cost of any repair, replacement or reinstallation necessitated thereby; provided, however, it is expressly understood and agreed that Landlord shall not be liable for the acts or omissions of other tenants of the Property.

**8.02. Maintenance of the Property.** Landlord shall maintain the (i) Property, including the Land, in a good condition, reasonable wear, tear and obsolescence excepted, and (ii) the area in the immediate vicinity of the System in a reasonably neat and clean condition. Except as expressly set forth herein to the contrary, in no event shall Landlord attempt to move, repair, replace or maintain any part of the System. If Landlord requires the temporary removal of any part of the System to properly maintain the Ground, Landlord shall give Tenant prior written notice of such need at least one hundred twenty (120) days before the desired date of removal (except in the case of an emergency where Landlord shall endeavor to provide as much prior notice to Tenant as is reasonable under the circumstances), and Landlord shall be responsible for all associated costs of removal and reinstallation of the System. Landlord may not require the temporary removal of any part of the System for greater than twenty (20) consecutive days.

**8.03 Landlord's Right to Perform Tenant's Maintenance.** Without limiting any other right or remedy of Landlord set forth herein, in the event Tenant fails to perform its maintenance, repair or replacement obligations under this Article in a prompt manner and thereafter fails to remedy such failure following thirty (30) days' notice of the same given by Landlord (or shorter period of time in instances where such failure creates an unreasonable risk of injury or damage to person or property), Landlord shall have the right (but not the obligation) to perform such obligations on behalf of Tenant, in which event the cost of such performance, together with interest at the Prime Rate per annum, shall be due and payable by Tenant to Landlord immediately upon demand.

**8.04 Security.** To the extent Landlord takes reasonable measures to provide security for the exterior of the Land, Landlord agrees to provide and take such reasonable security measures for the System and Equipment. Except as expressly set forth in the foregoing sentence, Landlord shall have no responsibility whatsoever to provide security for the System or Equipment.

## **ARTICLE 9**

### **UTILITIES AND SERVICES**

**9.01 Utilities and Services.** Tenant shall be responsible for setting up accounts with and paying for all utilities or services related to its use of the Premises. If Tenant fails to pay any utility bills or charges, Landlord may, at its option, upon reasonable prior written notice to Tenant pay the same and in such event, the amount of such payment will be due and payable hereunder upon demand. Absent the breach, act or omission, negligence or willful misconduct

of Landlord or its agents, employees, contractors, authorized representatives or invitees, Landlord shall not be responsible for the stoppage or interruption of utilities services nor shall Landlord be liable to Tenant or any other person for any damage occasioned by failure in any utility system or by the bursting or leaking of any vessel or pipe in or about the Premises or for any damage occasioned by water or ice coming onto the Premises.

**9.02 Use of Land Systems.** Tenant shall have the right for the Term to use the Land's existing electrical systems and high speed internet connections (the "Existing Systems") as reasonably necessary to allow Tenant to monitor the System; provided, however: (i) Tenant's use of such Existing Systems shall not overload such Existing Systems or otherwise impair the functionality of the same; (ii) Tenant's use shall not prevent or limit Landlord's ability to use the Existing Systems; and (iii) Tenant shall be responsible for all costs and expenses arising from Tenant's use of the Existing Systems, including without limitation any increased utility or service fees or bills resulting from Tenant's use.

## **ARTICLE 10**

### **USE OF PREMISES AND EASEMENTS**

Tenant shall use the Premises and Easements only as a solar photovoltaic facility (Tenant's "Permitted Use") and for no other use or purpose without Landlord's prior written consent. Notwithstanding the foregoing, it is understood and agreed that under no circumstances shall Tenant use the Premises or Easements in a manner which would: (i) intentionally damage the roof of the Land; (ii) damage the Property, Land, any of Landlord's property within or on the Ground, Land or Property, or any of other tenant's property; (iii) interfere with or disturb in any way the conduct of Landlord's and any other tenant's, occupants or user's use, business or enjoyment of the Property or portions thereof. Tenant's use of the Premises and Easements shall at all times comply with all laws, ordinances, covenants, restrictions, orders, rules and regulations (including without limitation, the zoning classifications existing as of the Effective Date) of any lawful governmental authority, agency or other public or private regulatory authority having jurisdiction over the Property or over Tenant's Permitted Use of the Premises and Easements. Tenant shall use and occupy the Premises and Easements in a careful, safe and proper manner and shall keep the Premises and Easements in a clean and safe condition in accordance with this Lease. Tenant shall use and maintain the Premises and Easements consistent with present commercially reasonable standards of good photovoltaic operations and shall not permit any activities inconsistent with such standards. Absent the breach, act or omission, negligence or willful misconduct of Landlord or its agents, employees, contractors, authorized representatives or invitees, Tenant shall save Landlord harmless from any penalties, fines, costs, expenses or damages resulting from failure so to comply with the provisions relating to use of the Premises and Easements set forth herein. Tenant shall not do any act or follow any practice relating to the Premises and Easements which shall constitute a nuisance. Tenant's duties in this regard shall include making arrangements at Tenant's expense for the proper storage and timely disposition of garbage and refuse, and allowing no noxious or offensive odors, fumes, gases, smoke, dust, steam or vapors, or any loud or disturbing noise or vibrations to originate in or emit from the Premises and Easements. Tenant

shall be responsible for obtaining and maintaining all licenses, permits and governmental authorizations necessary or desirable for Tenant's use of the Premises and Easements.

## **ARTICLE 11**

### **CHARACTERIZATION OF EQUIPMENT AND SYSTEM**

Subject to the provisions of **Article 16** and **Article 24**, the System and all Equipment shall remain Tenant's personal property and Tenant shall have the right at any time to remove the same from the Premises. The System, including all of its Equipment, is and shall remain personal property regardless of its use or manner of attachment to the Land or the Premises, and shall not constitute fixtures. To the extent that, notwithstanding the intent and agreement of the parties, if all or any part of the System shall be determined to constitute a fixture, except to the extent expressly set forth herein to the contrary, Landlord irrevocably disclaims any interest whatsoever in the System and Equipment as fixtures. Except as expressly set forth in this Lease, Landlord shall have no right, title or interest in any part of the System, and no right to purchase or otherwise acquire title to or ownership thereof, and Landlord expressly disclaims any right, title or interest in or to the System, whether arising by lien, by operation of law or otherwise

## **ARTICLE 12**

### **DAMAGE OR DESTRUCTION OF PREMISES**

If either Land or the Premises should be partially or wholly destroyed or damaged by fire or other casualty and such damage or destruction cannot in Landlord's reasonable judgment be substantially repaired within two hundred forty (240) days of the date of such damage or destruction, then Landlord shall so notify Tenant within thirty (30) days of the date of such casualty and either party hereto may, at its option, terminate this Lease by giving written notice thereof to the other party within thirty (30) days after the date of Landlord's notice. If neither party exercises this option or if either Land or the Premises should be damaged by fire or other casualty which can be repaired within two hundred forty (240) days, then the Premises shall be restored at Landlord's expense to substantially the same condition as existed on the Commencement Date, reasonable wear and tear excepted.

## **ARTICLE 13**

### **CONDEMNATION**

If all of the Premises is taken or condemned for a public or quasi-public use, or if a material portion of the Premises is taken or condemned for a public or quasi-public use and the remaining portion thereof is not usable by Tenant with respect to the System as a whole, in the reasonable judgment of Tenant, this Lease shall terminate as of the earlier of the date title to the condemned real estate vests in the condemnor. Nothing herein contained shall be deemed to prohibit Tenant from making a separate claim, against the condemnor, to the extent permitted by law, for the value of Tenant's leasehold and Equipment and System relocation.

## ARTICLE 14

### **ACCESS TO PREMISES**

**14.01. Landlord's Access Rights.** In non-emergency situations, Landlord and Landlord's property manager and Landlord's officers and authorized employees, or any other party authorized by Landlord, shall have the right to enter any secured portion of the Premises upon 2-days' prior written notice to Tenant. In emergency situations, said entry shall be permissible without prior notice so long as Landlord notifies Tenant immediately following such entry.

**14.02. Tenant's Access Rights.** At all times during the Term, provided no Event of Default exists, and subject to Landlord's reasonable security measures and force majeure events, Tenant shall have twenty-four (24) hours-a-day, seven (7) days-a-week access to the Premises for purposes of exercising its rights and carrying out its obligations under this Agreement. Except in cases of emergency, Tenant shall provide Landlord with at least twenty-four (24) hours prior notice of the need to access the Premises, shall schedule such access at times approved by Landlord and shall not materially or unreasonably interfere with Landlord's business at the Property.

## ARTICLE 15

### **ASSIGNMENT AND SUBLETTING**

Tenant may not assign or sublet its interest in this Lease, the Premises, or any interest in the whole or in any portion thereof, without the prior written consent of Landlord, which consent will not be unreasonably withheld provided that (i) no Event of Default (as defined in **Article 24** below) has occurred and is continuing at the time of the request for consent to the assignment or sublease, (ii) the assignee or subtenant and any additional guarantor shall assume in writing the performance of all of the terms, provisions and covenants of this Lease on the part of Tenant and Guarantor to be kept and performed, (iii) the assignee or subtenant and additional guarantor is reasonably creditworthy given the nature and extent of the liabilities being undertaken and (iv) Tenant shall deliver to Landlord within ten (10) days (or as soon thereafter as is reasonably practicable) after the assignment or subletting an executed duplicate of such agreements, together with duly executed assumption agreements.

## ARTICLE 16

### **SURRENDER, REMOVAL AND HOLDING OVER**

**16.01 Removal of System.** Tenant agrees to surrender to Landlord, on the Expiration Date of this Lease and/or upon any earlier termination or cancellation of the Lease, the Premises in broom clean condition and approximately as good condition as said Premises were in on the Commencement Date, ordinary wear and tear, and damage by fire or other casualty accepted.



**16.02 Surrender; Holdover.** Tenant agrees that if Tenant does not surrender said Premises in the manner set forth above to Landlord at the end of the Term of this Lease or upon the earlier termination hereof, then Tenant shall be deemed to be a holdover tenant remaining in possession without the permission of Landlord. Any such holdover shall not constitute a renewal of this Lease, but rather shall constitute a tenancy at sufferance, terminable in accordance with law. The terms and conditions of this Lease shall continue to control during any such holdover period.

**16.03 Removal Rights of Landlord.** In the event Tenant is required to remove any Equipment or component of the System and Tenant fails to do so as required hereunder, in addition to any other rights or remedies of Landlord set forth herein or otherwise provided by law, Landlord shall have the right and option to deem the same to be abandoned by Tenant, whereupon the same shall, at Landlord's election, become the property of Landlord. In such event, Landlord shall be authorized to (but under no circumstances shall Landlord be obligated to):

(a) retain the Equipment and System and operate the System, either itself or through a subsequent tenant, as it deems advisable in its sole discretion whereupon all costs and expenses whatsoever associated with such operating efforts, shall be borne by Landlord; or

(b) remove the Equipment and System and to thereupon auction, transfer, gift or otherwise dispose of the same in any manner it deems advisable in its sole discretion, whereupon all costs and expenses whatsoever associated with such removal and disposition (including without limitation labor, equipment rentals, storage, advertising expenses, sale expenses, disposal fees, transfer taxes, and attorneys' fees), together with interest at the Prime Rate per annum, less any net income received from such disposition, shall be the responsibility of Tenant and paid to Landlord upon demand therefor.

## **ARTICLE 17**

### **COVENANT OF QUIET ENJOYMENT; NON-INTERFERENCE**

**17.01 Quiet Enjoyment.** Landlord represents that it has full right and authority to lease the Premises and that Tenant shall peacefully and quietly hold and enjoy the Premises for the full Term hereof so long as it does not default in the performance of any of the terms hereof past any applicable cure or grace period.

**17.02 Non-Interference.** During the Term, Landlord agrees that it will not, directly or indirectly, cause or allow any of the following:

- (a) Holes to be drilled in, or penetrations of, the Ground Equipment;
- (b) Placement of any equipment, structure or improvements on or over the Ground Equipment;

(c) Interference in any material adverse way with the System's ability to generate solar power;

(d) Any of the Equipment to become subject to any lien, mortgage, deed of trust, security agreement, mechanics lien or other encumbrance;

(e) The Ground to be maintained, altered, modified, repaired, replaced or compromised in such a way that it can no longer support the Ground Equipment; and

(f) The Transformer to be maintained, altered, modified, repaired, replaced, compromised or removed in such a way that it can no longer transmit any and all Electrical Output when the System is operating at full or any other capacity.

## **ARTICLE 18**

### **ENVIRONMENTAL MATTERS**

Tenant shall not shall keep, store, use or dispose of, in, on, upon or from the Property or Premises, any toxic or hazardous substance, waste or material, or any pollutant or contaminant, as those terms are used or defined in any federal, state or local law, statute, ordinance, code, rule, regulation or order and neither shall create, maintain or permit any nuisance in or on the Property or Premises.

Hazardous materials or toxic waste or substances are defined as those substances, materials, and wastes, including but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substances which is [i] petroleum, [ii] asbestos, [iii] polychlorinated biphenyls, [iv] designated as a Hazardous Substances pursuant to Section 331 of the Clean Water Act, 33 U.S.C. Sec. 1251, et. seq. (33 U.S.C. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Sec. 1371], [v] defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act. 42 U.S.C. Sec. 6901, et. seq. [42 U.S.C. Sec. 6903), or [vi] defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et seq.

Tenant shall indemnify Landlord and hold it harmless for any and all costs, liabilities, claims, penalties, damage, including, without limitations, lost profits, consequential damages, interest, penalties, fines and monetary sanctions, expenses, attorneys' fees, consultants' fees, court costs, loss, damage or injury to person or property, including any legal action incurred, suffered by or brought against Landlord by any federal, state or local government agency, or subdivision there, or by any other third party claimant, all federal, state and local authorities which claim jurisdiction over such matters in the protection of human health or the environment, resulting from, or in connection with, or arising in any manner whatsoever out of the handling, treatment, storage, transportation, disposal, emission, release or discharge of contaminants, hazardous materials or waste generated or produced by Tenant, its employees or agents, or for any similar environmental contamination to the extent such contamination is caused by Tenant and occurs exclusively during the period hereof, including any renewals. This covenant shall run with the Term of this Lease and any exercised option periods, and Tenant indemnification shall survive the termination of the Lease for all periods during which Tenant was Tenant in the Premises.

Tenant shall exercise all due caution in handling and disposing of all hazardous materials.

## **ARTICLE 19**

### **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

This Lease shall be subject and subordinate to any and all deeds to secure debt, mortgages, deeds of trust or other security instruments ("Security Instruments") now or hereafter placed on the property of which the Premises are a part; provided, however, that Tenant will not be disturbed and this Lease shall not be divested by foreclosure or other default proceedings thereunder so long as no Event of Default by Tenant shall then be subsisting under the terms of this Lease.

## **ARTICLE 20**

### **LIABILITY FOR DAMAGE**

Landlord shall not be liable for any damage done or occasioned by or from the electrical or electricity systems, the heating or cooling systems, the plumbing and sewer systems; nor for damage occasioned by water, snow or ice being upon the roof, trapdoor, walls, windows, doors or otherwise, in, upon or about the Land or Premises unless Landlord is expressly responsible under this Lease for the repair and maintenance of same and fails to properly maintain same or otherwise causes same.

## **ARTICLE 21**

### **TRANSFER OF LANDLORD'S INTEREST**

If Landlord shall sell, assign or transfer all or any part of its interest in the Property or in this Lease in a bona fide transaction to a successor in interest which expressly assumes the obligations of Landlord hereunder at the time of such transfer, then Landlord shall thereupon be released or discharged from all covenants and obligations hereunder, and Tenant shall look solely to such successor in interest for performance of all of Landlord's obligations; provided, that the Landlord shall not be relieved of its liability, if any, to the Tenant for acts or omissions that occurred prior to the transfer and covenants and obligations which accrued prior to the transfer. Any such transfer shall be subject to the terms of this Lease. Tenant's obligations under this Lease shall in no manner be affected by Landlord's assignment hereunder, and Tenant shall thereafter attorn and look solely to such successor in interest as the Landlord hereunder.

## **ARTICLE 22**

### **ESTOPPEL CERTIFICATE**

Within fifteen (15) days after a request by Landlord or any mortgagee of Landlord, Tenant shall deliver a written estoppel certificate, in form supplied by the Landlord, certifying to the best of Tenant's knowledge as to any facts that are then true with respect to this Lease,

including, but not limited to (to the extent true), that this Lease is in full force and effect, that no default exists, and that Tenant is in possession.

## **ARTICLE 23**

### **FORCE MAJEURE**

In the event Landlord or Tenant shall be delayed, hindered or prevented from the performance of any act required hereunder, by reason of governmental restrictions, scarcity of labor or materials, strikes, fire, or any other reasons beyond their control, the performance of such act shall be excused for the period of delay, and the period for performance of any such act shall be extended as necessary to complete performance after the delay period.

## **ARTICLE 24**

### **DEFAULT**

#### **24.01 Tenant Default**

**24.01.01 Events of Tenant Default.** The occurrence of any of the following events shall constitute an Event of Tenant Default under this Lease:

(a) Tenant fails to pay any charge or sum required to be paid by Tenant hereunder within fifteen (15) days after receipt of written notice thereof by Tenant from Landlord; or

(b) Tenant fails to perform or commence in good faith and proceed with reasonable diligence to perform any of its covenants under this Lease within thirty (30) days after receipt of written notice thereof by Tenant from Landlord; or

(c) Tenant fails to keep its corporate or company status in good standing with its state of incorporation or the state in which the Premises is located and is not properly reinstated within thirty (30) days after notice thereof from Landlord; or

(d) Tenant abandons the Premises or ceases to do business therein without Landlord's prior written permission for a period longer than thirty (30) consecutive business days.

**24.01.02 Landlord's Remedies.** In the event Tenant is in default pursuant to the conditions set forth in **Section 24.01.01** above, Landlord shall have the option of pursuing the following remedies:

(a) Landlord may re-enter the Premises and perform any obligations and/or take any commercially reasonable actions which Tenant has failed to perform, in which event Tenant shall reimburse Landlord for any reasonable cost and expenses which Landlord may incur in connection therewith; and Landlord shall not be liable to Tenant for any loss or damage which Tenant may sustain by reason of Landlord's action, unless caused by Landlord's breach, act or omission, negligence or willful misconduct.

(b) Landlord shall be entitled to enjoin any breach by Tenant of any covenant or condition hereunder and may invoke any right or remedy allowed by law or in equity or by statute or otherwise without being restricted to these remedies provided in this Lease.

(c) Landlord may terminate this Lease, or without terminating the Lease, may terminate Tenant's right to possession of the Premises, in either of such events, Tenant shall immediately surrender possession of the Premises and Tenant shall remove the System and all Equipment in accordance with the requirements set forth in **Article 16** hereof within thirty (30) days after said termination.

Each right and remedy of Landlord set forth in this Lease shall be cumulative, and not alternate, and may be exercised in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity by any statute or otherwise. The exercise of any right or the pursuit of any remedy by Landlord shall not preclude the simultaneous or later exercise of pursuit by Landlord of any other right or remedy.

**24.02 Landlord Default.** If Landlord fails to perform or commence in good faith and proceed with reasonable diligence to perform any of its covenants under this Lease within thirty (30) days after receipt of written notice from Tenant, then Landlord shall be in default of this Lease. In such event, Tenant shall have the option to pursue one or more of the following remedies:

(a) Tenant shall be entitled to enjoin any breach by Landlord of any covenant or condition hereunder and/or may invoke any right or remedy allowed by law or in equity or by statute or otherwise without being restricted to these remedies provided in this Lease.

(b) Tenant may terminate this Lease.

Each right and remedy of Tenant set forth in this Lease shall be cumulative, and not alternate, and may be exercised in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity by any statute or otherwise. The exercise of any right or the pursuit of any remedy by Tenant shall not preclude the simultaneous or later exercise of pursuit by Landlord of any other right or remedy.

Notwithstanding the foregoing, under no circumstances shall Landlord or Tenant be liable to the other for consequential, punitive or exemplary damages arising from any default pursuant to this Article 24.

## **ARTICLE 25**

**(Intentionally Omitted)**

## **ARTICLE 26**

### **NOTICES**

Any notice allowed or required by this Lease shall be in writing, and shall be deemed effective and received (a) on the date of personal, in-hand delivery by one party to the other, or (b) two (2) business days after deposit, with proper postage attached or fee paid when sent by either (i) United States mail, via certified mail or registered mail, return receipt requested, or (ii) nationally recognized overnight courier (for example, Federal Express), and addressed as set forth below. Copies of all notices shall be sent as provided below.

AS TO LANDLORD:

Add name & address

WITH A REQUIRED COPY TO:  
applicable

Add name & address of attorney if

AS TO TENANT:

Add name & address

WITH A REQUIRED COPY TO:

Add additional name & address if needed

The addresses of Landlord and Tenant and the party, if any, to whose attention a notice or copy of same shall be directed may be changed or added from time to time by either party giving notice to the other in the prescribed manner.

## **ARTICLE 27**

**(Intentionally Omitted)**

## **ARTICLE 28**

### **MISCELLANEOUS**

**28.01 Evidence of Authority.** If requested by Landlord, Tenant shall furnish appropriate legal documentation evidencing the valid existence and good standing of Tenant to transact business in Georgia and the authority of any parties signing this Lease to act for Tenant.

**28.02 Nature and Extent of Agreement.** This Lease, together with all exhibits hereto, contains the complete Lease of the parties concerning the subject matter, and there are no oral or written understandings, representations, or agreements pertaining thereto which have not



been incorporated herein. This Lease creates only the relationship of Landlord and Tenant between the parties, and nothing herein shall impose upon either party any powers, obligations or restrictions not expressed herein.

**28.03 Binding Effect.** This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns. This Lease may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. This Lease shall not be binding on the parties until executed by Landlord and Tenant.

**28.04 Captions and Headings.** The captions and headings in this Lease are for convenience and reference only, and they shall in no way be held to explain, modify, or construe the meaning of the terms of this Lease.

**28.05 Severability.** If any term, covenant, condition or provision of this Lease, or the application whereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Lease or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall remain valid and enforceable to the fullest permitted by law.

**28.06 Governing Law.** This Lease shall be construed according to, and be governed by, the laws of the State of Georgia.

**28.07 Time of Essence.** Time shall be of the essence in the performance of the terms and conditions of this Lease.

**28.08 Recording.** It is not intended that this Lease be recorded, but at the request of either party the other party shall execute a Memorandum of Lease which shall be recorded with the requesting party paying the recording costs. In the event of termination of this Lease prior to the expiration date, Tenant shall execute and deliver to Landlord immediately upon request therefor an instrument evidencing such termination.

**28.09 Attorney's Fees.** If either party brings an action against the other involving the Premises or this Lease to enforce the provisions thereof, the prevailing party in any such proceeding, action or appeal thereon, shall be entitled to its reasonable attorneys' fees from the non-prevailing party.

**28.10 Consents.** Except as otherwise provided herein, whenever the consent of either party is required, such consent shall not be unreasonably withheld, conditioned, or delayed.

**28.11 Effective Date.** The "Effective Date" shall be the date on which the latter of Landlord or Tenant have executed this Lease Agreement. The Effective Date shall be inserted on page 1 hereof, provided that the failure to insert such date shall have not have any effect on the actual Effective Date.

**28.12 Addenda and Exhibits.** If any addenda or exhibits are identified below, such addenda and exhibits are incorporated herein by reference and made a part of this Lease.

- (a) **Exhibit A** – Land
- (b) **Exhibit B** – Premises
- (c) **Exhibit C** – Form of Solar Easement

**28.13 Confidential Information.** (a) **Definition.** The following constitutes “**Confidential Information**”: (i) proposals and negotiations before the Effective Date concerning the Lease, (ii) the terms of the Lease, and (iii) information that either Tenant or Landlord stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (A) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of the Lease; (B) information that becomes publicly available through no fault of the recipient after the time of the delivery; (C) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (D) information that the recipient independently developed without a violation of the Lease.

(b) **Duty to maintain Confidentiality.** Landlord and Tenant agree not to disclose Confidential Information received from the other to anyone (other than Landlord’s and Tenant’s respective affiliates, counsel, consultants, lenders, prospective lenders, purchasers, prospective purchasers, investors, prospective investors, contractors constructing or providing services to the System (including but not limited to suppliers), employees, officers and directors who have a need to know and agree to be bound by the provisions of this Section), without the deliverer’s prior written consent. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (i) to be made to governmental authorities by any requirements of law, (ii) pursuant to an order of a court or (iii) in order to enforce the Lease. With the exception of the terms of the Lease, the originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion. In the event a recipient is requested to disclose, or is required by law or by a court or regulatory agency to disclose Confidential Information, the recipient will, to the extent reasonably practicable, notify the deliverer at least five (5) business days in advance of such disclosure. The foregoing obligations in this Section 28.13 shall continue during the Term (including any extensions thereof) and for three (3) years following the termination of the Lease (provided that in the case of any Confidential Information that is a trade secret, such obligations shall continue for so long after the aforesaid three (3) years as the information in question remains a trade secret).

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed and signed under seal, pursuant to authority duly given, as of the day and year first above written.

[signature pages follow on next page]

EXHIBIT A: Map of land or building where array will be installed